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EXTRAORDINARY.

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BANGALORE, WEDNESDAY, MAY 25, 1938.

PART IV.

Legislative Measures and Rules thereunder.

NOTIFICATION.

No. 3757—L. C., Bangalore, dated 19th May 1938.

Under Standing Order No. 49 of the standing orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to remove all Legal Obstacles to the marriage of Hindu Widows in the Mysore State is published for general information.

By Order,

A. SUNDARARAJA RAO,

Secretary,

Mysore Legislative Council.

Report of the Select Committee on the Bill to remove all Legal Obstacles to the Marriage of Hindu Widows.

We, the members of the Select Committee appointed to consider the Hindu Widows Marriage Bill have considered the Bill and have now the honour to submit this our report.—

Preamble.—As the main object of the measure is to remove the legal obstacles to the re-marriage of such Hindu Widows as wish to re-marry and to hold offsprings of such marriages legitimate, we consider the words "good morals and to the" as unnecessary and we accordingly recommend that they may be omitted.

Clause 1.—The Act may come into operation at the expiration of one month from the date of its publication.

Clause 4.—This clause as it is at present worded is vague and defective. There is no such thing as "guardian in marriage" recognised under Hindu law. The clause does not also effectively protect the interest of minor widows who may be enticed to marry by persons not expected to safeguard her interests. We recommend that instead of this clause the following clause which is substantially the same as section 7 of the British Indian Act, be substituted.—

Consent to re-marriage of minor widow.

"If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or failing all these, of her elder brother, or failing also brothers, of her next male relative."

Punishment for abetting marriage made contrary to this section.

"All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine or to both."

Effect of such marriage proviso.

"And all marriages made contrary to the provisions of this section may be declared void by a Court of law: Provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated."

"In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid." Consent to re-marriage of major widow.

Clause 6.—A distinction is made in this clause between property inherited by a widow from her deceased husband and property got by her by gift or testamentary disposition. In the former case her rights cease on re-marriage while in the latter she is given an absolute estate unless there is an express prohibition to re-marry. We see no justification for such a distinction. On her re-marriage she must be considered to be civilly dead and she must forfeit all her rights in the property of her husband by whatever means obtained. The widow being civilly dead in respect of her rights to the property of her deceased husband, she cannot claim it even in the absence of next heirs of her deceased husband as provided for in the exception.

We recommend that the following clause which is comprehensive may be substituted for the present clause 6.—

"All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same." Rights of widow in deceased husband's property to cease on her re-marriage.

Clause 7.—This clause also is not worded clearly. The object is to see that the interests of the children by the first marriage are safeguarded. The second proviso is also unnecessary as the question of appointment of a guardian by the Court arises only when the widow has not been expressly constituted guardian by will. We recommend that the following be substituted for this clause.—

"On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the Guardian of children of deceased husband on the re-marriage of his widow.

guardian of his children, the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be by the laws and the rules in force touching the guardianship of children who have neither father nor mother:"

"Provided that when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors."

As the bill has been amended in material particulars, we recommend that it may be republished as amended by us.

S. P. RAJAGOPALACHARI
(Chairman).
A. V. RAMANATHAN.
K. R. SUBBANNACHAR.
MIRLE N. LAKSHMINARANAPPA.
T. RAMACHANDRA.
B. T. KESAVIENGAR.

Messrs. M. S. Dyave Gowda and Belur Srinivasiengar were unable to be present at the meeting.